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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	WT Docket No. 95-157
Amendment to the Commission's	)	RM-8643
Rules Regarding a Plan for	)	
Sharing the Costs of Microwave	)	
Relocation	)	

To: The Commission

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REPLY COMMENTS OF WESTERN WIRELESS CORPORATION

Western Wireless Corporation ("Western"), by its attorneys, hereby respectfully submits its Reply Comments in response to the Notice of Proposed Rulemaking, FCC 95-426 ("NPRM") in the above-referenced proceeding, released by the Commission on October 13, 1995. Western submitted its Comments in response to the NPRM on November 30, 1995.[1/]

I. Western Supports Adoption of the Proximity Threshold as the Interference Standard for Determination of Cost-Sharing Responsibility

1. Western supports AT&T Wireless Services, Inc. ("AT&T"), GTE Service Corporation ("GTE"), PCS PrimeCo, L.P. ("PrimeCo") and Sprint Telecommunications Venture ("STV") in their proposal that the FCC adopt a "proximity threshold" to determine interference for purposes of the cost-sharing formula. As detailed by the commenters listed above, a cost-sharing obligation would arise if a subsequent licensee turns on a fixed base station ("FBS") at commercial power and the FBS is located within a rectangle defined by a simple series of coordinates derived from the nodes of the microwave link and is co-channel to that link (based on the full

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[1/] As noted in the Comments, Western, which has extensive cellular operations west of the Mississippi River, holds six A-Block PCS licenses through wholly-owned subsidiaries.

licensed bandwidths). See, e.g., Comments of GTE, Appendix. As acknowledged by the Commission, TIA Bulletin 10-F ("10-F") "may not provide a clear standard for determining interference in some situations." NPRM at 25. Not only are the results imperfect, but the calculations necessary to determine potential interference under 10-F are complex, costly and time consuming. See Comments of Southwestern Bell Mobile Systems, Inc. ("SBMS") at 6-7. By eliminating the need for calculation of potential interference, the proximity threshold methodology is a much simpler means of determining whether a subsequent licensee has an obligation to reimburse a prior licensee for relocation costs. If the proximity threshold is met for any "microwave link within a microwave network, a party will incur cost sharing obligations pursuant to [the] Agreement for the entire microwave network (being moved as part of [a] single agreement." Comments of GTE at 6. Thus, it will lead to fewer disputes over whether interference will occur and more expedited and economical resolution of cost-sharing agreements.

II. Western Supports Adoption of the $250,000 Cap

A. As Western stated in its Comments, it fully supports the FCC's tentative conclusions with regard to the value of the cap on reimbursable costs. Comments of Western at 6-7. Western feels strongly that the proposed $250,000 cap is a reasonable reflection of the actual cost of the relocation of a microwave link, and that the cap should not be increased. See NPRM at 21.[2/] Research done

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[2/] Many of the commenters support the proposed $250,000 cap as reasonable. See, e.g., Comments of BellSouth Corp. ("BellSouth") (continued...)

by both the FCC and UTAM leaves no room for doubt that relocation costs will be less than $250,000 per link.[3/] Increasing the cap above $250,000 would naturally raise the expectations of some microwave incumbents to a level bearing no reasonable relation to the actual costs and magnify the difficulties that are already being experienced by PCS licensees in their negotiations with some incumbents. In addition, with a higher cap, earlier PCS licensees -- faced with the imperative of time to market -- will have less incentive to bargain hard for cost-based agreements, knowing that they will be reimbursed for a substantial portion of relocation costs.

III. Western Supports Adoption of a Good Faith Requirement Throughout the Voluntary and Mandatory Negotiation Periods

B. In accord with other PCS licensees and commenters, Western reiterates that it is absolutely critical that the FCC adopt a requirement that negotiations be held in good faith throughout both the voluntary and the mandatory negotiation periods in order to enable PCS licensees to reach fair and timely agreements with incumbents. See, e.g., Comments of the Cellular Telecommunications Industry Ass'n at 8, Comments of Intercel, Inc. at 3, and Comments of SBMS at 2-3, each of which stresses the need for a good faith negotiation requirement during the voluntary period. The continued refusal of a single incumbent to enter into

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[2/] (...continued)
at 7-8, Comments of the City of San Diego at 5, Comments of DCR Comm., Inc. at 4, Comments of GO Comm. Corp. ("GO") at 5, Comments of Omnipoint Comm. at 6-7, Comments of PCIA at 29-30, Comments of the Telecommunications Industry Ass'n at 8, Comments of U.S. Airwaves at 2, and Comments of UTAM, Inc. at 11.

[3/] See NPRM at 21 and Comments of UTAM at 11.

negotiations with Western in one of its markets is a compelling illustration of the inadequacy of the current rules. See Comments of Western at 12-13. Western also asks that the Commission clarify that a lack of bad faith in negotiating does not automatically constitute good faith. Such an interpretation could permit microwave incumbents to continue to refuse to negotiate. A refusal to negotiate should not constitute permissible behavior any more than a rejection of an offer of comparable facilities.

C. Western also agrees with many of the commenters that microwave incumbents should be subject to some additional penalty when they refuse to negotiate in good faith. Western advocates that after the first act of bad faith during the voluntary period, the mandatory period should automatically begin. After the second act of bad faith, the incumbent should be given secondary status, and the PCS licensee should be relieved of all relocation obligations. Adoption of such a penalty would provide needed incentive for incumbents to participate in good faith negotiations, resulting in prompt and even-handed agreements and expediting provision of PCS service to the public. The widespread demand for additional constraints on the carte blanche freedom of incumbents during the voluntary period underscores the difficulties that PCS licensees are facing in their attempted negotiations with all too many microwave incumbents.[4/]

[4/] For example, AT&T advocates shortening the voluntary negotiation period to one year at the outset, and, in specific cases where the microwave incumbent acts in bad faith, causing the mandatory negotiation period to commence upon the FCC's grant of a petition to that effect. Comments of AT&T at 15-16. GO requests replacement of the current negotiation system with one where there (continued...)

IV. The Commission Should Clarify that the Trial Period Can Be Waived By Agreement

D. As Western and many other commenters stated in their comments, the Commission should clarify that the twelve month trial period can be waived by agreement between the microwave incumbent and the PCS licensee.[5/] Rules that accommodate the widest possible range of voluntary agreements will best promote the goals of rapid and efficient development of PCS on the 2 GHz band and equitable relocation of microwave users to other spectrum.

V. The Commission Should Not Adopt the NSMA Working Group 20 Guidelines for Prior Coordination Notices As Currently Proposed

E. Contrary to the request of BellSouth (see Comments of BellSouth at 16), the FCC should not adopt the National Spectrum Managers Association Working Group 20 Guidelines for PCS Coordination Procedures with Fixed Microwave Users in the 1.9 GHz Band ("Guidelines"). BellSouth has not demonstrated that any benefit would result from adoption of the additional procedures required by the Guidelines. On the contrary, Western maintains that the Guidelines are overly detailed and burdensome. Much of

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[4/](...continued)
is a one year mandatory negotiation period, followed by involuntary relocation. Comments of GO at 7-9. PCIA suggests a one year mandatory period to commence upon notification by a PCS licensee that it wants to negotiate. PCIA at 11-15. STV suggests replacement of the current negotiation process with a single good faith negotiation period. Should the microwave incumbent refuse to negotiate or negotiate in bad faith, the PCS licensee would be able to file a petition for involuntary relocation. Comments of STV at 12, 17.

[5/] See, e.g., Comments of Western at 16, Comments of AT&T at 12, Comments of BellSouth at 11, Comments of GTE at 19, Comments of PrimeCo at 20, Comments of PCIA at 24, Comments of SBMS at 5-6 and Comments of UTAM at 18-19.

the technical information required under the Guidelines has no relevance to the determination of interference. In addition, the Guidelines require disclosure of confidential business information that would in no way facilitate the relocation process. If the FCC does require that PCS licensees follow the NSMA Guidelines, it must make them workable by eliminating the requirements for extraneous technical and business information. Otherwise, the burden on PCS licensees will be greatly increased, slowing down the development of PCS systems with no offsetting benefit to microwave incumbents.

VI. UTAM Should Not Be Accorded Special Treatment Under the Cost-Sharing Plan

F. Western believes that UTAM does not deserve special treatment under the cost-sharing rules. Unlike the C-Block applicants themselves, UTAM has not been accorded special benefits by Congress. Unlike the licensed PCS providers, who must pay for their use of the spectrum, UTAM's members are getting the benefit of the spectrum for free. Many of the members of UTAM are large corporations which do not face the financial obstacles that will affect many of the C or F-Block licensees. Thus, UTAM should not be entitled to pay its cost-sharing obligations under an installment plan that was tailored to C and F-Block license holders. Western maintains that if the Commission does allow UTAM the benefit of an installment plan, any such plan should have a much shorter time frame than ten years and be at an interest rate based on commercial money markets.[6/]

[6/] Pacific Bell Mobile Services ("PBMS") also argues that UTAM is not entitled to the same treatment as designated entities. Comments of PBMS at 5-6.

VII. **Depreciation Must Begin on a Date Certain**

G. Contrary to the position of AT&T that cost-sharing obligations should be triggered by system turn-up, (see Comments of AT&T at 9-10), Western maintains that the difficulties inherent in determining the in-service date of a PCS system render it an unworkable standard. Because no filing is required at the time of turn-up, it could be difficult to verify this date. Furthermore, the turn-up date could be variously interpreted as the date of the first test of the system, the first commercial use of the system or the turn-up of the majority of the system. As maintained in its Comments (see Western's Comments at 9), Western reiterates that basing the timing of depreciation and repayment obligations on a reasonable time period after the filing of the PCNs would be a more workable methodology. See also Comments of PBMS at 2 and Comments of SBMS at 8 (in-service dates are volatile).

VIII. **C-Block Licensees Should Not Be Exempt from Cost-Sharing**

H. Contrary to the statements of some C-Block applicants,[7/] they should not be exempt from cost-sharing responsibilities. Although the first PCS licensee to market may have some competitive advantage, a premium is already being exacted from this carrier by the exclusion of premium costs from the cost-sharing formula and the reduction of reimbursement payments by a depreciation schedule. Any lead-time advantage does not negate the benefit of the relocation to later interfering licensees, including the C-Block

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[7/] See, e.g., Comments of Iowa, L.P. 136 at 3-7 (requesting exemption during the involuntary relocation period) and Comments of the Minnesota Equal Access Network Services, Inc. at 1-3 (requesting exemption from cost-sharing).

licensees, who otherwise would be required to pay the entire cost of relocation themselves. While the C and F-Block licensees may have more limited resources than the A and B-Block licensees, the Commission has already made adequate concession by allowing them to pay their cost-sharing obligations through the installment plan, reducing their reimbursement obligations by a depreciation formula and excluding premium payments.

IX. Digital Equipment Is Not Comparable to Analog Equipment

I. Western maintains that PCS licensees should not be required to replace an analog system with a digital system, whether during the voluntary or mandatory negotiation periods or in connection with an involuntary relocation. Digital equipment is not comparable to analog equipment; rather, it represents a system upgrade for which PCS licensees should not be charged. Such a requirement would only increase the costs for PCS licensees by raising the expectations of certain incumbents. It is expected that it may be expedient for a PCS licensee to elect to replace analog with digital equipment in certain situations, e.g., as an incentive for early relocation, but in no case should such an upgrade be required.

X. Conclusion

Western urges the Commission to adopt the cost-sharing rules that it proposed in the NPRM, with the changes and additions described in Western's Comments and in these Reply Comments. Adoption of a cost-sharing plan is necessary to insure that all PCS carriers benefiting from relocation of microwave facilities bear their fair share of the costs, and the modifications proposed by

Western are essential to prevent certain microwave incumbents from continuing to impede PCS service to the public and realizing unfair windfalls from their relocation.

Respectfully submitted,

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